Supreme Court, U.S.
FILED
FEB 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1135

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

CHARLES LARRANCE,

Petitioner,

v.

THE ILLINOIS HUMAN RIGHTS COMMISSION, THE ILLINOIS DEPARTMENT OF HUMAN RIGHTS, MACON COUNTY FARM BUREAU, COUNTRY CASUALTY INSURANCE COMPANY, COUNTRY INSURANCE COMPANY, COUNTRY MUTUAL INSURANCE COMPANY, COUNTRY LIFE INSURANCE COMPANY, and COUNTRY CAPITAL MANAGEMENT COMPANY,

Respondents.

Petition for Certiorari to the
Supreme Court of the
State of Illinois

BRIEF AMICUS CURIAE IN SUPPORT OF THE PETITIONER

GARY H. PALM
Counsel of Record
EDWIN F. MANDEL LEGAL AID CLINIC
of the University of Chicago Law School
and United Charities of Chicago
6020 South University Avenue
Chicago, Illinois 60637
(312) 702-9611

Attorney for Amicus Curiae

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PRELIMINARY STATEMENT

In the decision below, the Illinois courts have again allowed a state-created cause of action for discrimination to be destroyed because of the failure of the agency to comply with statutory time limits. As such, the decision below violates the Fourteenth Amendment under this Court's unanimous holding in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), a case which Illinois agencies and courts have ignored. Certiorari should be granted so that victims of discrimination in Illinois receive hearings on the merits rather than losing their claims as a result of the actions of the state agency.

INTEREST OF AMICUS CURIAE

The Edwin F. Mandel Legal Aid Clinic ("the Clinic") has for the past 20 years devoted a significant portion of its practice to the representation of victims of employment discrimination. Its clients have frequently suffered from the failure of the

state agency to comply with required procedures and have a strong interest in seeing that the law governing those claims is correctly applied. The Clinic represented the plaintiff in Logan, as well as the plaintiffs in Bennett v. Tucker, 827 F.2d 63 (7th Cir. 1987), discussed infra.

The Illinois courts and agencies have repeatedly refused to follow Logan. Instead, they continue to allow the failure of state employees to comply with statutory time limits to negate individuals' property rights in statutorily-created causes of action.

The Illinois Human Rights Act, like the Fair Employment Practices Act which preceded it ("the Act"), is the sole state remedy for persons claiming to be victims of discrimination. It is the Clinic's experience that employment discrimination claimants generally do not seek counsel to represent them until sometime after their charge has been filed with the state agency.

Indeed, the purpose of the administrative procedure for prosecuting claims of employment discrimination was to encourage claimants to bring their claims pro se. In the decision below, the Illinois courts have yet again penalized pro se plaintiffs for the actions of the state agency. The Clinic's clients have a strong interest in ensuring that Illinois courts do not continue to ignore Logan.

STATEMENT OF FACTS

For purposes of the petition, the following facts are relevant (references are to the opinion of the Fourth District of the Illinois Appellate Court's decision reprinted in the appendix accompanying Petitioner's brief):

1. Petitioner was discharged for allegedly discriminatory reasons. App. 16a.

2. Petitioner attempted to file a charge with the Illinois Fair Employment Practices Commission, now the Illinois Department of

Human Rights ("the Department") well within the statutory time limit. App. 16a.

3. Although the Act created an absolute right to file the charge, the Department's then applicable procedures did not permit petitioner to file his charge until the Department had completed its investigation. App. 17a-18a.

4. By the time the Department completed its investigation, the statutory time period for filing a charge had expired. App. 19a.

5. The Illinois courts held that petitioner could not pursue his charge because it had not been timely filed. App. 22a-23a, 26a.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION BELOW ALLOWING NULLIFICATION OF A CLAIM DUE TO FAILURE BY THE STATE AGENCY COMPLY WITH STATUTORY TIME LIMITS IS IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN LOGAN V. ZIMMERMAN BRUSH CO.

The Illinois Supreme Court, by refusing to review the Appellate District's decision, has destroyed petitioner's statutory claim

due to the failure of the state agency to comply with statutory time limits, without ever allowing that claim to be considered on the merits. Although petitioner complied with the Department's procedural requirements, his claim was terminated because the Department denied him his statutory right to file a charge within the applicable time limit. As argued in the Petition for Certiorari, penalizing petitioner for the state's failure is in direct conflict with Logan. Therefore, certiorari should be granted. Supreme Court Rule 17.1(c).

Moreover, as was the case in Logan, the decision below "unambiguously divides claims--and thus, necessarily, claimants--into two discrete groups that are accorded radically different treatment." 455 U.S. at 438-439. Those which the Department timely files are adjudicated; those which it does not are terminated. As Justices Blackmun, Brennan, Marshall and O'Connor concluded in

Logan, the random nature of the state's failure to comply with its statutory requirements--resulting in the destruction of the claim--violated the Equal Protection Clause of the Fourteenth Amendment. 455 U.S. at 441-442. Indeed, as Justice Powell and then-Justice Rehnquist pointed out in Logan, the creation of two classes of claims depending solely on whether the state agency complied with its time limits bears no rational relationship to any legitimate government interest. Id. at 443-444.[1]

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[1] The consistent body of federal decisions interpreting Title VII, upon which the Act was modeled, is further evidence of the irrationality of the decision below. Federal courts have consistently held that the information provided by petitioner to the Department -- which the Department refused to accept as a charge -- satisfies the parallel Title VII filing requirements. See, e.g., Love v. Pullman Co., 404 U.S. 522, 525 (1971); Steffen v. Meridian Life Insurance Co., 859 F.2d 534, 542 (7th Cir. 1988); Rabzak v. County of Berks, 815 F.2d 17, 20 (3d Cir. 1987); Tillman v. City of Boaz, 548 F.2d 592, 594 (5th Cir. 1977).

II. CERTIORARI SHOULD BE GRANTED TO RECTIFY THE ILLINOIS COURTS' AND AGENCIES' REFUSAL TO COMPLY WITH LOGAN.

The Illinois human rights agencies and the Illinois courts have ignored this Court's decision in Logan. This Court should grant the Petition for a Writ of Certiorari so that victims of discrimination in Illinois are not deprived of their constitutional rights to due process and equal protection.

The Department frequently takes responsibility for various aspects of processing the charge because most complainants are proceeding pro se. However, through inadvertence, negligence or bureaucratic inefficiency, the Department sometimes misses a deadline or otherwise fails to comply with a required procedure. Despite the fact that the claimant was not at fault in the Illinois agencies and courts have consistently penalized them for the Department's failures and held that the

charge is barred.[2] Inexplicably, this pattern of decisions has not changed since Logan.

In Logan, the Illinois Supreme Court had held that the Department's failure to conduct a fact finding conference within 120 days deprived the agency of jurisdiction and terminated the charge. This Court reversed.

Similarly, in Board of Governors v. Illinois Fair Employment Practices Commission, 78 Ill. 2d 143, 399 N.E.2d 590 (1979), the Illinois Supreme Court decided that the agency's failure to complete its investigation within the required 180 days deprived the agency of jurisdiction and terminated the complainant's claim. Despite this Court's subsequent holding in Logan, the Department refused to reassert jurisdiction in these cases. A federal

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[2] The effect of the decision below is to absolutely destroy the statutory cause of action of petitioner (and those similarly situated) as the Act does not permit a judicial action if a charge was not timely filed with the Department.

class action was filed and the Court of Appeals for the Seventh Circuit rejected the Department's arguments that Logan did not apply to these claims. Bennett v. Tucker, 827 F.2d 63, 69 (7th Cir. 1987).

Now, in this case, the Illinois courts have once again allowed agency delay to bar a claim before the Department. It is important to the victims of discrimination in Illinois that they be able to rely on the state agencies without fear that agency mistakes will destroy their claims. As noted, nearly all these complainants are proceeding pro se--indeed, the procedures were designed to encourage pro se proceedings--so that there is no lawyer watching the agency to make sure it meets each deadline and satisfies each procedural requirement.

While complainants may in appropriate cases be held responsible for their own mistakes and delays, Logan dictates that they not be penalized for the mistakes and

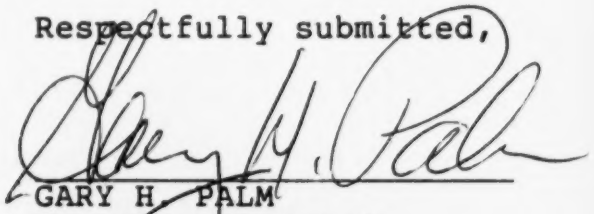
delays of state employees. If complainants lose it should be because of a decision on the merits or because of some failure by them. Otherwise their rights to due process and equal protection are violated.

CONCLUSION

For the reasons stated above the petition for a writ of certiorari should be granted.

Dated: Chicago, Illinois
February 2, 1989

Respectfully submitted,



GARY H. PALM
Counsel of Record
Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School and United Charities of Chicago
6020 S. University Ave.
Chicago, Illinois 60637
(312) 702-9611

February 2, 1989

Larrance v. Illinois Human Rights Commission,
No. 88-1135

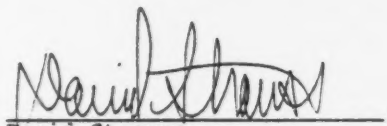
On behalf of the respondents Macon County Farm Bureau, Country Casualty Insurance Company, Country Insurance Company, Country Mutual Insurance Company, Country Life Insurance Company and Country Capital Management Company, I hereby consent to the filing of an amicus curiae brief on behalf of petitioner in the above case by Gary H. Palm of the Edwin F. Mandel Legal Aid Clinic.

James Fiffer

January 27, 1989

Larrance v. Illinois Human Rights Commission,
No. 88-1135

On behalf of the respondent, Illinois Human Rights Commission, I hereby consent to the filing of an amicus curiae brief on behalf of petitioner in the above case by Gary H. Palm of the Edwin F. Mandel Legal Aid Clinic.

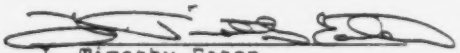


David Strauss

January 30, 1989

Larrance v. Illinois Human Rights Commission,
No. 88-1135

On behalf of the petitioner, Charles Larrance, I hereby consent to the filing of an amicus curiae brief on behalf of petitioner in the above case by Gary H. Palm of the Edwin F. Mandel Legal Aid Clinic.



J. Timothy Eaton

January 27, 1989

Larrance v. Illinois Human Rights Commission,
No. 88-1135

On behalf of the respondent, Illinois Human Rights Department, I hereby consent to the filing of an amicus curiae brief on behalf of petitioner in the above case by Gary H. Palm of the Edwin F. Mandel Legal Aid Clinic.

Shelvin L Hall

Shelvin Hall

CERTIFICATE OF SERVICE

Gary Palm, attorney of record for the Edwin F. Mandel Legal Aid Clinic, certifies that he is a member of the Bar of the Court, and that on February 2, 1989 he caused to be served by first class mail a copy of the Brief Amicus Curiae on the following:

Name and Address

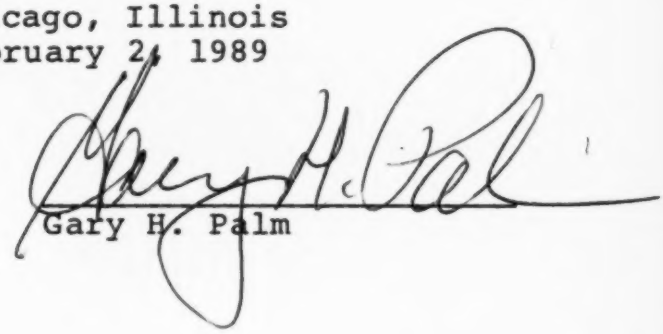
J. Timothy Eaton
Coffield Ungaretti Harris & Slavin
3500 Three First National Plaza
Chicago, Illinois 60602
Attorney for:
Charles Larrance

James Fiffer
Wildman, Harrold, Allen & Dixon
One IBM Plaza, Ste. 3000
Chicago, Illinois 60611
Attorney for:
Macon County Farm Bureau, Country Casualty Insurance Company, Country Insurance Company, Country Mutual Insurance Company, Country Life Insurance Company, and Country Capital Management Company

David Strauss
Illinois Human Rights Commission
100 W. Randolph Street, Ste. 5-100
Chicago, Illinois 60601
Attorney for:
Illinois Human Rights Commission

Shelvin Hall
Illinois Human Rights Department
100 W. Randolph Street
Ste. 10-100
Chicago, Illinois 60601
Attorney for:
Illinois Human Rights Department

Dated: Chicago, Illinois
February 2, 1989



Gary H. Palm